



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

May 20, 2004

Ms. Noelle C. Letteri  
Legal Services Division  
Texas General Land Office  
P.O. Box 12873  
Austin, Texas 78701-1495

OR2004-4168

Dear Ms. Letteri:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 201922.

The Texas General Land Office (the "GLO") received a request for documents regarding seismic exploration on Carancahua Bay. You state that some information responsive to the request has been released to the requestor, but you claim the information you have marked is excepted from disclosure under section 552.101 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

You acknowledge, and we agree, that the GLO did not seek an open records decision from this office within the ten-day deadline prescribed by section 552.301(b). *See* Gov't Code § 552.301(b) (governmental body seeking to withhold information must ask for a decision from attorney general within ten business days of receiving written request for information). Because the request for a decision was not timely submitted, the requested information is presumed to be public information. Gov't Code § 552.302. In order to overcome the presumption that the requested information is public information, a governmental body must provide compelling reasons why the information should not be disclosed. *Id.*; *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381 (Tex. App.—Austin 1990, no writ); *see* Open Records Decision No. 630 (1994). Compelling reasons to withhold information include showing that the information is made confidential by another source of law or that its release affects third-party interests. *See Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381 (Tex. App.—Austin 1990, no writ); Open Records Decision No. 630 (1994). Section 552.101 of

the Government Code can provide a compelling reason for withholding information; therefore, we will address your argument under this section.

Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." This section encompasses information protected by section 52.324 of the Natural Resources Code. Section 52.324 provides in relevant part:

(a) The commissioner [of the GLO]:

...

(2) may require a permittee to furnish to the commissioner, upon the commissioner's request, copies of maps, plats, reports, data, and any other information in the possession of the permittee that relates to the progress or results of an exploration under a permit; provided however, the commissioner shall not require a permittee to furnish any of its interpretive data;

...

(e) If by authority of Subsection (a)(2) of this section the commissioner acquires information concerning a permittee's geophysical or geochemical exploration, the commissioner shall consider the information to be confidential and may not disclose it, except by authority of a court order, to the public or any other agency of this state.

A permit from the commission is required before a person can conduct geophysical or geochemical exploration on public school land, unless that person has an oil and gas lease authorized under chapter 52 of the Natural Resources Code. *See* Nat. Res. Code § 52.322(a). The application for the permit must include the name of each person for whom the exploration is being conducted, as well as any other information required by the commissioner. *Id.* § 52.323(b). Section 52.324 authorizes the commissioner to obtain from a permittee information that relates to the progress of exploration under a permit. *See* Nat. Res. Code § 52.324(2).

You assert the following:

[T]he marked documents . . . are documents that the permittee at issue submitted to the agency relating to the progress of the exploration under the permit. These documents represent the shot line coordinates the permittee used during its seismic exploration of the area at issue. The maps illustrate the coordinates of these shot lines. Shot lines represent the geographic

location on the earth's surface where the seismic exploration took place. These lines illustrate the sequencing of the seismic exploration and thus its progress under this permit.

We assume that the commissioner acquired the marked information under authority of section 52.324. *See* Gov't Code §52.324(a)(2). Based on your representations and our review of the information, we agree that the marked information is confidential under section 52.324(e), and must be withheld under section 552.101.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at (877) 673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).


If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be

sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at (512) 475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



James L. Coggeshall  
Assistant Attorney General  
Open Records Division

JLC/seg

Ref: ID# 201922

Enc. Submitted documents

c: Mr. Ken Morris  
Chairman  
Carancahua Bay Protection Association, Inc.  
231 County Road 307 South  
Port Lavaca, Texas 77979-5350  
(w/o enclosures)